IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 221 of 2001

(Old No. 3588/1999)

Date of decision:- 20/06/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 20/6/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.221 of 2001.
(Old No. 3588/1999)

Ram Prakash Sharma son of late Salig Ram-Secretary, Northern Railway Consumer Co-operative Society Limited, Hardwar.

.....Applicant.

Versus

1. State of U.P.
2. Judicial Magistrate- I (Central Bureau of Investigation/Special Police Establishment), Dehradun.
3. Special Judge (Anti Corruption), U.P. East, Dehradun
4. Sri S.S.Atwal, Inspector of Police Central Bureau of Investigation/Special Police Establishment, Dehradun (complainant).

...Respondents.

Shri L.K. Tiwari, learned counsel for the Applicant.
Shri U.K.Uniyal.G.A. for the State.

Dated: 20.06.2006

Hon'ble J. C. S. Rawat, J.

1. The present petition has been filed under section 482 Cr.P.C. to quash the impugned order dated 09.04.1999 passed by the Judicial Magistrate- I, C.B.I., Dehradun in complaint case No.116 of 1999 and to seek direction to make a fresh investigation and thereafter to submit the charge sheet against the applicant and to quash the prosecution of the applicant in pursuance of the order dated 09.04.1999. It was further prayed that the C.B.I. may be directed not to proceed with the case under section 168,409 IPC. and

Section 13(2) read with section 13(1)© & (d) of the Prevention of Corruption Act, 1988.

2. The brief facts for the disposal of this petition are that the respondent No.4 was the I.O. of R.C No.7(A)/ 98 under section 168,409 IPC and Section 13(2) and 13(1)(c) & (d) of the Prevention of Corruption Act, 1988. The applicant was a electric fitter at the Railway Station, Hardwar and he was a public servant and he was also working as a Secretary of the Northern Railway Consumer Co.operative Society Ltd. Hardwar. The complainant had stated that the investigation of the case was pending at the time of the filling of the complaint. The complainant during the course of the investigation of the aforesaid case filed a complaint before the Special Judicial Magistrate, Dehradun alleging therein that he was investigating the case as indicated above and he found that the applicant is in violation of the Bye Laws running a restaurant and Pan, Biri and Ration shop and using the food stuffs obtained for the purposes of the canteen to his personal gain at Hardwar. The applicant being a public servant and being legally bound as such public servant had not to engage in trade for his personal gain and he further stated that he had collected the sufficient evidence in this regard and a

case under section 168 IPC is, prima-facie, made out. The learned Magistrate, after hearing the parties, dismissed the complaint holding that the matter is pending for the investigation and, as such, the complaint is not maintainable.

3. I have heard the learned counsel for the applicant as well as Sri V.K.Uniyal, Sr.Counsel and assisting counsel Sri Shobith Saharia.

4. It is pertinent to mention here that the prosecution for which the complaint had been filed was already subjudice before the I.O. There is no bar under section 195 Cr. P.C. that complainant was obliged to file a complaint before the Magistrate. The said matter can be investigated by the C.B.I. in accordance with the provisions of the Code of Criminal Procedure. If the matter was under investigation it was not obligatory on the part of the complainant to file the said complaint. The complaint was rejected and the complainant was not aggrieved by that order but it was the C.B.I. who could have filed this petition before this court. I do not understand why this petition has been filed challenging the order dated 9.4.1999 by the applicant. He could not have any argument, as such, the petition is not maintainable.

5. The second prayer which has been made in the petition also reveals that the matter is under investigation and no charge sheet has been filed. The I.O. himself has admitted that fact in the complaint itself. The learned counsel for the applicant could not show me that the charge sheet has been filed. The charge sheet has not been filed and, as such, there is no question of quashing the charge sheet. It was further prayed that the C.B.I. may be directed to reinvestigate the matter. It is also well settled position of law that if the matter is under investigation the court can not make any interference during the investigation. The court has no power to direct the Investigating Agency either to direct to investigate the matter in the light of the observations of the court. The Investigating Agency is independent agency under the provisions of the Code of Criminal Procedure. The court only assumes its jurisdiction after submitting the charge sheet and the Magistrate had a power under section 178 Cr.P.C. to further investigate the matter. The power under section 482 Cr.P.C. is limited one and the power can not surpass the provisions of Code of Criminal Procedure. The direction for the reinvestigation can not be granted under the provisions of the Code of Criminal Procedure,

as such the court has no inherent power to pass such an order.

6. In view of the foregoing discussion I am of the view that the petition is devoid of merit and is dismissed.

(J. C. S. Rawat, J.)

20.06.2006
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